

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

DONTE GARRETT,

Petitioner,

v.

CIVIL ACTION NO. 2:15-cv-02672

MARVIN C. PLUMLEY,

Respondent.

**MEMORANDUM OPINION AND ORDER**

This action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636. On September 9, 2015, Judge Eifert submitted her Proposed Findings and Recommendations [ECF No. 15] (“PF&R”) and recommended that the court **GRANT** the respondent’s Motion to Dismiss the Petition as Untimely [ECF No. 10], **DENY** the petitioner’s Motion for Appointment of Counsel [ECF No. 3], **DENY** the petitioner’s Petition for a Writ of Habeas Corpus [ECF No. 2] pursuant to 28 U.S.C. § 2254, and **DISMISS** the case. Neither party filed objections to the PF&R.

A district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Because the parties have not filed objections in this case, the court accepts and incorporates herein the PF&R and orders judgment consistent therewith.

The court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is a substantial showing of the denial of a constitutional right. *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 – 84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The court **GRANTS** the respondent's Motion to Dismiss the Petition as Untimely [ECF No. 10], **DENIES** the petitioner's Motion for Appointment of Counsel [ECF No. 3], **DENIES** the petitioner's Petition for a Writ of Habeas Corpus [ECF No. 2], **DISMISSES** the case, and **DIRECTS** this action be removed from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 18, 2015



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE